

ZONING BOARD OF REVIEW
MINUTES

September 3, 2008
7:40 P.M.

The following petitions were received and were heard by the Tiverton Zoning Board of Review on Wednesday, September 3, 2008 at 7:40 p.m. at the Tiverton Town Hall, 343 Highland Road.

1. A petition has been filed by the Tiverton Yacht Club, 58 Riverside Drive requesting a variance to Article V, Section 1 of the Tiverton Zoning Ordinance in order to permit existing lockers to remain located at 0 Riverside Drive, Tiverton, RI being Map 6-5, Block 73, Card 30 on Tiverton Tax Assessor's maps closer to the side yard setback than currently allowed in a waterfront zoning district.

DECISION: Chairman David Collins recused himself from this matter. Attorney Kenneth Tremblay requested a continuance on this petition. They are currently working on purchasing the property of the neighbor, and if they do so, this matter will be resolved. Ms. Gescheidt made a motion to continue until October 6, 2008. Ms. Krumholz seconded. The vote was unanimous. Voting were: John Jackson, Susan Krumholz, Lise Gescheidt, Raymond LaFazia and Michael Mello.

2. A petition has been filed by the Tiverton Yacht Club of 58 Riverside Drive, Tiverton, RI requesting a special use permit to Article VI Section 7 and Article XVI Section 3.d. of the Tiverton Zoning Ordinance in order to install an individual sewage disposal system (ISDS) within 200 feet of the Sakonnet River to replace an existing ISDS at 58 Riverside Drive, Tiverton, RI being Map 6-5 Block 70 Card 5 on Tiverton Tax Assessor's maps whereby a special use permit is required in a R40 zoning district.

DECISION: Chairman David Collins recused himself from this matter. Attorney Tremblay appeared on behalf of the petitioner. Attorney Campbell objected to this petition being heard because Attorney Tremblay withdrew petition number three at the last minute without any notification and requested a continuance. Attorney Tremblay objected to any continuance. The board decided to hear the case and take argument after Mr. Tremblay presented his evidence.

The following exhibits were introduced by Attorney Tremblay and marked:

1. Decision from Judge Thunberg in superior court litigation
2. Proposed order from Judge Thunberg in superior court litigation
3. Tiverton Yacht Club's objection to proposed order

4. David Campbell's response to proposed order.
5. Order signed by Judge Thunberg
6. Letter addressed to Mr. Brian Moore, DEM dated December 22, 2003
7. Letter addressed to Mr. DeRiso DEM dated November 25, 2003
8. Letter addressed to Mr. Brian Moore, DEM dated December 18, 2003
9. Letter addressed to Mr. Brian Moore, DEM dated January 30, 2004
10. John A. Silvia's resume.

Attorney Tremblay quoted from the Judge's Order "the proposed ISDS (septic system) installation is an enlargement of the former system and is designed to support a more intensive use, therefore requiring additional zoning relief." Upon the Judge's Order Attorney Tremblay is coming before the board to request zoning relief. The yacht club has an approved ISDS from DEM and CRMC and wish the board to grant relief so they can move forward to rebuild the club.

Todd Chaplin appeared before the board and stated as follows: His firm designed the original 525 gallon per day system and upon DEM's request they increased it to 1,615. He stated that this system is very conservative and because of that, it should never fail. Mr. Chaplin stated that this system should never see the 1,615 figure flow rate. Also, he stated that himself, DEM's engineers, and CRMC engineers have reviewed this plan, and this design meets all their guidelines and regulations. Mr. Chaplin further stated that it will not impact the neighbors and will not have an adverse impact on Sakonnet River and that DEM and CRMC have regulations that would prevent that.

Wayne Karzenski, vice commodore of the Tiverton Yacht Club, stated as follows: The CRMC assent was due to expire in August of this year. More than 60 days before that expiration, the club sent in an extension application along with a check, and that's being processed right now. Such extension is good for one year. Mr. Karzenski stated that their original design was for 525 gallons, but due to the neighbors' requesting a larger system, they acquiesced and decided to design the larger system.

John Silvia, real estate appraiser, appeared before the board and stated as follows: in his opinion this septic system complies with the comprehensive plan and will not be detrimental and will not have any adverse impact on the neighbors.

The following exhibits were introduced by Attorney Campbell and marked:

- a. David M. Campbell versus Tiverton Zoning Board Defendants Post Trial memo, Tiverton Zoning Board of Review
- b. Letter dated August 20 addressed to Peter Ruggiero

After the conclusion of closing arguments from Attorney Tremblay and Attorney Campbell, the board went into Executive Session. Ms. Gescheidt made a motion to grant the petition for the following reasons:

1. There is no prejudicial impact from the withdrawal of one of the petitions for the use variance, and everyone was on notice that the special use permit was on the table and on the agenda today.
2. The testimony of the engineer opined that this was the safest system, that it had the input of a number of engineers at DEM in addition to himself as well as impact from the neighbors that requested that a larger septic system was more appropriate for the area.
3. The expert testified that there would be no adverse impact to the water body. There are no wetlands there other than the Sakonnet River, and there was no adverse effect of fish or wildlife habitat or flood or any of the other factors that are under Article 16, Section 3.d.
4. The board can take into consideration the fact that Judge Thunberg's decision on the Charlestown case said that zoning boards are supposed to defer to DEM that have much more sophisticated knowledge and special skills as far as engineering and environmental impact are concerned, and it was the DEM that required a larger system than existed before. The fact that it's a larger system doesn't mean that it's an increase in the use of that system.
5. The continuation of a cesspool or an old ISDS was not fulfilling the health and safety requirements that DEM imposes and that the zoning ordinance imposes.
6. Because the system is not visible it wouldn't affect property values and that there was no evidence of any adverse impact to the neighbors of the increase of the septic system.
7. The public convenience and welfare will be served by improving the system
8. There is no evidence that it's detrimental to public health, safety, morals or welfare.
9. It is compatible with the neighboring uses and won't affect the general character of the area.
10. It won't create a nuisance or hinder or endanger any kind of vehicular or pedestrian movements, since it's within the confines and underground for the most part.
11. There are adequate provisions made for water services and sewerage disposal and fire protection. Those are factors that the DEM takes into consideration in deciding whether or not to approve a system, and the board has accepted DEM and the expert professional engineer that testified today.
12. Also from the expert testimony it's compatible with the Comprehensive Plan.

Ms. Krumholz seconded. The vote was unanimous. Voting were: John Jackson, Susan Krumholz, Lise Gescheidt, Raymond LaFazia and Michael Mello.

3. A petition has been filed by the Tiverton Yacht Club of 58 Riverside Drive, Tiverton, RI requesting a variance to Article XIV Section 5 of the Tiverton Zoning Ordinance in order to install an individual septic disposal system (ISDS) within 200 feet of the Sakonnet River to replace an existing ISDS at 58 Riverside Drive, Tiverton, RI being Map 6-5 Block 70 Card 5 on Tiverton Tax Assessor's maps because extension, enlargement or moving of a legal non-conforming use requires a variance in a R40 zoning district.

DECISION: Chairman David Collins recused himself from this matter. This petition was withdrawn upon request by Attorney Kenneth Tremblay.

4. A petition has been filed by Therese L. Holland of 949 Neck Road, Tiverton, RI requesting a special use permit to Article VII Section 4.b. of the Tiverton Zoning Ordinance in order to construct a new single family dwelling at 364 Riverside Drive, Tiverton, RI being Map 6-7 Block 56 Card 1 on Tiverton Tax Assessor's maps higher than allowed in a R40 zoning district.

DECISION: Mr. Jeremiah Holland and Ms. Terry Holland appeared before the board and stated that this board granted a variance previous but they didn't realize that they needed a special use variance for the height of said building, too. Mr. Holland stated that it's the same footprint and same height as the existing building. Nothing has changed. Ms. Krumholz made a motion to grant and requested that the board incorporate the previous decision into this petition. Ms. Gescheidt seconded. Voting were: David Collins, John Jackson, Susan Krumholz, Lise Gescheidt, and Raymond LaFazia.

5. A petition has been filed by George T. Medeiros of 1031 Stafford Road, Tiverton, RI requesting a special use permit to Article XII of the Tiverton Zoning Ordinance in order to replace the existing sign with an internally illuminated sign and a small electronic lighted changeable message sign at 1031 Stafford Road, Tiverton, RI being Map 4-10 Block 99 Card 93F on Tiverton Tax Assessor's maps and located in a R60 zoning district.

DECISION: Attorney Kenneth Tremblay received a letter from the Conservation Commission requesting they continue the matter. Mr. Tremblay stated he would like to honor that request and wished to continue this matter. Ms. Krumholz made a motion to continue. Ms. Gescheidt seconded. The vote was unanimous. Voting were: David Collins, John Jackson, Susan Krumholz, Lise Gescheidt, and Raymond LaFazia.

6. A petition has been filed by Nicholas Realty Co. of 1848 Main Road, Tiverton, RI requesting a variance to Article V Section 1 of the Tiverton Zoning Ordinance in order to enlarge the existing front porch at 1848 Main Road, Tiverton, RI being Map 6-2 Block 84 Card 5 of the Tiverton Tax Assessor's maps closer to the front yard setback and exceeding lot coverage allowed in a GC zoning district.

DECISION: Attorney Kenneth Tremblay appeared before the board on behalf of the petitioner. Mr. Tremblay stated that in 1997 this board granted a request to put a 10 foot porch in the front of said business, but Mr. Chrisochoins never constructed it. Now he wishes to construct a 14 foot porch for summer use only.

Mr. Chrisochoins stated that he wished to construct a 14 foot porch on the waterfront side for summer business only. He figures he can put five or six tables out there sitting 20 or 30 people.

Mr. Richard Carrubba, real estate appraiser, testified as follows: That the proposed porch will be keeping with the comprehensive plan, will not have a detrimental effect to adjoining properties, that it would not be contrary to public interest.

Mr. Michael Stern appeared before the board and stated that he owns the parcel next to the restaurant. It's a small parcel about 30 feet deep around 15 feet wide. He stated he didn't want anymore use over his piece of land. Mr. Tremblay stated that they did not need to go over that piece of land, because there is access off of Gatsby Avenue.

The Board went into Executive Session to discuss the matter. Ms. Gescheidt made a motion to grant. The porch will be an improvement over the current unusable porch that is there now. It will only be for a limited purpose, for summer months. Also, there is plenty of parking and plenty of room for egress and ingress. It also falls within the comprehensive plan of encouraging business in the area. Mr. LaFazia seconded. The vote was unanimous. Voting were: David Collins, John Jackson, Susan Krumholz, Lise Gescheidt, and Raymond LaFazia.

7. A petition has been filed by Charles Temple of 491 Stafford Road, Tiverton, RI requesting an extension of time on a variance or a determination that he has exercised the permission granted to him on February 2, 2007 regarding property located at 491 Stafford Road, Tiverton, RI being Map 3-12 Block 113 Card 39 on Tiverton Tax Assessor's maps and in a R60 zoning district.

DECISION: Attorney Leary made a request to continue until October 6, due to the lateness in the evening and the board may not be able to hear this petition. The Board agreed and continued this petition until next month.

8. A petition has been filed by Larry Nogueira of New Bedford, MA requesting a variance to Article V Section 1, Article VII Section 4 and Article XVII of the Tiverton Zoning Ordinance in order to construct a single family dwelling at 0 Three Rod Way, Tiverton, RI being Map 1-3 Block 185 Card 20 on Tiverton Tax Assessor's maps closer to the front, rear and side yard setbacks and with less than required lot area located in a R80 zoning district.

DECISION: Mr. Jackson made a motion to continue until October 6, 2008. Ms Gescheidt seconded. The vote was unanimous. Voting were: David Collins, John Jackson, Susan Krumholz, Lise Gescheidt, and Raymond LaFazia.

9. A petition has been filed by South Shore Tiverton LLC of 413 Bulgarmarsh Road, Tiverton, RI requesting a variance to Article XIV Section 5, Article IV and Article V Section 1 of the Tiverton Zoning Ordinance in order to expand a legal non conforming use and to construct an additional building higher than allowed at 413 Bulgarmarsh Road, Tiverton, RI being Map 2-8 Block 117 Cards 30 & 30A on Tiverton Tax Assessor's maps located in a R40 and R80 zoning district.

DECISION: Attorney Leary made a request for a continuance due to the number of petitions on the agenda. They feared they might not get heard and cancelled their expert witnesses for the night. Ms. Krumholz made a motion to continue until October 6, 2008. Mr. Mello seconded. The vote was unanimous. Voting were: David Collins, John Jackson, Susan Krumholz, Lise Gescheidt, and Raymond LaFazia.

10. A petition has been filed by Constance Lima, President of the Tiverton Land Trust requesting a special use permit to Article IV Section 6.c.1. and/or Article IV Section 14 of the Tiverton Zoning Ordinance in order to construct an building for educational purposes at 3228 Main Road, Tiverton, RI being Maps 2-5 & 2-6 Block 119 Card 2 on Tiverton Tax Assessor's maps and located in a Open Space zoning district.

DECISION: Ms. Lima from the Tiverton Land trust requested a continuance due to the fact the architect is finishing up the plans. Ms. Gescheidt made a motion to continue. Mr. Jackson seconded. The vote was unanimous. Voting were: David Collins, John Jackson, Susan Krumholz, Lise Gescheidt, and Raymond LaFazia.

Administrative Items: The Chairman mentioned the policy if there are more than six petitions in one night to split that into two nights. Mr. LaFazia mentioned that two nights would be difficult for some members to do. Ms. Krumholz recommended that they keep it on an as-needed basis and make the decision as needed.

Ms. Gescheidt read through last month's minutes and recommended a few minor changes. Ms. Krumholz made a motion to accept the minutes as corrected. Mr. Jackson seconded. The vote was unanimous. Voting were: David Collins, John Jackson, Susan Krumholz, Lise Gescheidt, and Raymond LaFazia.

Ms. Krumholz made a motion to adjourn. Mr. Jackson seconded. The vote was unanimous. Voting were: David Collins, John Jackson, Susan Krumholz, Lise Gescheidt, and Raymond LaFazia.

Whereupon the hearing concluded at 11:20 p.m.

ZBR:mae

C E R T I F I C A T E

I, Mary Ann C. Escobar, Registered Professional Reporter, hereby certify that the foregoing 7 pages are transcribed to the best of my knowledge, skill & ability.

IN WITNESS WHEREOF, I have hereunto subscribed my hand this 23rd day of October, 2008.

Mary Ann C. Escobar, RPR